

SIKKIM
GOVERNMENT **GAZETTE**



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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 22/LD/P/12

Dated: 21.6.2012

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on 3rd day of May, 2012 is hereby published for general information:-

THE SIKKIM LOCAL FUND AUDIT ACT, 2012
Act No. 22 of 2012

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THE SIKKIM LOCAL FUND AUDIT ACT, 2012
ACT NO. 22 OF 2012

AN
ACT

to provide for and to regulate the audit of the local funds under the management or control of certain local authorities in the State of Sikkim.

WHEREAS it is expedient to provide for and to regulate the audit of the local funds under the management or control of certain local authorities in the State of Sikkim.

BE it enacted by the Legislature of Sikkim in the Sixty-third Year of the Republic of India as follows:-

Short title, extent and commencement

1. (1) This Act may be called the Sikkim Local Fund Audit Act, 2012.
(2) It extends to the whole of Sikkim.
(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

Definition

2. In this Act, unless the context otherwise requires,-
(a) 'auditor' means the Director of Local Fund Audit and includes any other officer of the Local Fund Audit Directorate empowered by the Director to perform the functions of an auditor under this Act;
(b) 'concurrent audit' means continuous audit of accounts of a local authority by auditors specially appointed by the Government by virtue of the powers conferred on them by the relevant enactments;
(c) 'detailed audit' means an audit of accounts of the entire transactions for the whole year or for the period specified by the Director;
(d) 'Director' means the Director of Local Fund Audit and includes any person empowered by the Government to perform the functions of the Director of Local Fund Audit;
(e) 'Executive Authority' means the Executive Authority of the Local Authority;
(f) "Government" means the State Government of Sikkim;
(g) 'local authority' means-
(i) a Municipal Corporation or a Municipal Council/Nagar Panchayat constituted under the Sikkim Municipal Corporations Act, 2007 (5 of 2007) and Part IX A of the Constitution of India or a Gram Panchayat/Zilla Panchayat or District Planning Committee constituted or deemed to have been constituted for the local administration of a Panchayat area under the Sikkim Panchayat Act, 1993 in accordance with the provisions of Part IX of the Constitution of India;
(ii) Any other authority, body or institution established by or under any law or orders of the Government and responsible for the administration of a local fund;
(h) 'Local Fund' means -
(i) a fund administered by the local authority which, though not part of a Government Department, has been established by or under the law or orders of the Government, and

(ii) any other fund which the Government may, by notification in the Official Gazette, declare to be a local fund for the purpose of this Act;

(i) 'Prescribed' means prescribed by rules made under this Act;

(j) 'Schedule' means the Schedule appended to this Act;

(k) 'Special Audit' means an audit of accounts pertaining to a specified items or series of items requiring thorough examination, and includes re-audit of the accounts for a period already covered by audit as specified by the Director;

(l) 'State' means the State of Sikkim.

Appointment of Director

3. (1) The State Government shall, by Notification in the Official Gazette, appoint a person, having such qualifications as may be prescribed, to be the Director of Local Fund Audit In-charge of the Audit of Accounts of a Local Authority or a Local Fund included in the Schedule.

(2) The State Government may appoint such other officer in the Local Fund Audit Directorate to assist the Director in the exercise of his powers and the discharge of his functions and duties under this Act.

(3) All officers and staff of the Local Fund Audit Directorate shall be sub-ordinate to the Director who shall have general superintendence and control over them in the performance of their functions under this Act or the rules made there under.

Audit of accounts

4. (1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of the Comptroller and Auditor General, (Duties, Powers and Conditions of Service) Act, 1971 the Director shall, in the manner provided by or under this Act, conduct the audit of accounts of a local authority or a local fund included in the Schedule.

(2) The State Government may, by notification in the Official Gazette and for reasons to be specified therein, add any other authority, body, institution or local fund to the Schedule referred to in sub-section (1) and on the publication of the notification, such authority, body, institution or local fund shall be deemed to have been added to the Schedule.

(3) No authority, body, institution or local fund included in the Schedule referred to in sub-section (1) shall be omitted there from except by the authority of a law made by the State Legislature.

Power of audit of Accounts of certain Authorities,bodies institution or funds

5. The Director may, with the previous sanction of the State Government, and without prejudice to the provisions of sub-section (1) of section 4, audit the accounts of any authority, body, institution or fund not included in the Schedule subject to such terms and conditions as may be agreed upon between the Director and the person responsible for the administration of such authority, body, institution or fund.

<i>Audit of accounts of stock and stores and verification of cash balance</i>	<p>6. (1) The auditors shall have authority to audit and report on the accounts of stores and stock kept by a local authority specified in the Schedule.</p> <p>(2) The Director may, with the sanction of Government, seek the services of any technical expert for the purpose referred in sub-section (1) if, in his opinion, it is necessary to do so.</p> <p>(3) An officer not below the rank of a Deputy Director shall have authority to make surprise inspection of the stock and stores kept by a local authority specified in the Schedule.</p> <p>(4) The Director/auditor shall verify the cash balance of the fund at the time of audit and inspection.</p>
<i>Manner in which Audit is to be conducted</i>	<p>7. The auditor shall conduct the audit annually and at such intervals as may be decided by the Director or may conduct concurrent audit of such of those local authorities as are found necessary under the provisions of any law governing them or as may be decided by the Director in consultation with the Government.</p>
<i>Auditor to be deemed to be public servant</i>	<p>8. An auditor shall, for the purpose of powers and duties conferred and imposed on him by or under this Act, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).</p>
<i>Liability of local authorities to prepare and present accounts for audit.</i>	<p>9. The accounts of a local authority or a local fund included in the Schedule relating to a financial year shall be prepared or caused to be prepared by the Executive authority, in such form and in such manner as may be prescribed, and presented for audit within three months of the close of that financial year.</p>
<i>Copmpletion of audit of accounts</i>	<p>10. The audit of the accounts prepared and presented for audit under section 9 shall be completed by the auditor within six months of the date of its presentation for audit.</p>
<i>Power of auditor to require production of accounts and attendance of persons</i>	<p>11. (1) For the purpose of an audit under this Act, an auditor may:-</p> <p>(a) require in writing, the production at the place of audit, such vouchers, statements, returns, correspondences, notes or any other documents the perusal or examination of which he believes to be necessary for the elucidation of the accounts;</p> <p>(b) require in writing, any employee of the local authority accountable for or having the custody or control of such vouchers, statements, returns, correspondences, notes or other documents or any person having directly or indirectly, any share or interest in any contract with or under the local authority to appear in person before him at the head office of that local authority or at the place of audit and answer any question and require any person so appearing to make and sign a declaration with respect to such document or to prepare and furnish any statement relating thereto; and</p>

- (c) in the event of any explanation being required from any officer or member of a local authority, in writing, invite such person and shall in writing, specify the points on which his explanation is required.
- (2) The auditor may, in any requisition made under sub-section (1), fix a reasonable period of not less than three days within which the said requisition shall be complied with.
- (3) The auditor shall give notice in writing to the Executive authority of the institution concerned at least two weeks before the date on which he proposes to commence the audit:

Provided that the auditor may, for special reasons to be recorded in writing, give shorter notice than two weeks or commence a special or detailed audit without notice, on the order of the Director.

Audit reports to be sent to certain officers bodies as Government may direct

12. As soon as practicable after the completion of the audit, but not later than three months thereafter, the auditor shall send to the local authority concerned a report on the accounts audited and examined by him and the copies of the report shall also be sent to such officer and such bodies as the Government may direct or as may be specified under the law governing that local authority.

Contents of audit report

13. *The auditor shall include in the audit report a statement of-*

- (a) every payment which appears to him to be contrary to law;
- (b) the amount of any deficiency or loss which appears to have been caused by the negligence or misconduct of any person;
- (c) the cases of misappropriation or misutilisation of the local fund;
- (d) the amount, if any, received which is required to be brought into account but has not been brought into account by any person; and
- (e) any other material impropriety or irregularity which he has observed in the accounts.

Procedure to be followed after getting the report of the Director under Section 12

14. (1) On receipt of a report under section 12, the Executive authority concerned shall either remedy the defects or irregularities which may have been pointed out in the report and send to the Director within three months of the receipt of the report or within such period as may be specified under the law governing the local authority, intimation of his having done so, or shall, within the said period, supply to the Director any further explanation as he may wish to make in regard to the defects or irregularities.

(2) On receipt of such intimation or explanation, the auditor may, in respect of all or any of the matters discussed in his report:-

- (a) accept the intimation or explanation and drop the objection; or
- (b) hold that the defects or irregularities pointed out in the report or any of them have not been removed or remedied.

(3) The auditor shall send a report of his decision to the Executive authority concerned within three months from the date of receipt by him of the intimation or explanation referred in sub-section (1) or if no such intimation or explanation is received, on the expiry of the period of two months mentioned in that sub-section.

(4) The local authority concerned shall publish in its next administration report, such portions of the report under section 12, dealing with defects and irregularities falling under clause (b) of sub-section (2) together with the explanation thereof, if any, given under sub-section (1) and the final report of the auditor thereon under sub-section (3). The report of defects and irregularities, the explanation thereon and the final report shall be open to inspection by the public at the office of the local authority for a period of one month from the date of their receipt.

(5) Nothing in this section or in section 12 shall preclude the auditor, at any time, from bringing to the notice of the Government or of any officer of Government for such action as may be necessary, any information which appears to the auditor to support a presumption of criminal misappropriation or fraud or which, in his opinion, deserves special attention or immediate investigation.

Powers and duties of the Director

15. (1) The Director shall exercise general supervision and control over the discharge by the auditors of their duties under this Act.

(2) He may condone a payment made from a local fund, which appears to him contrary to law, if

- (i) in his opinion there was no negligence or misconduct on the part of person making or authorizing such payment, and
- (ii) such payments does not exceed rupees one hundred in each case.

16. The Director may, delegate all or any of the powers to be exercised or functions to be performed by him under this Act to any Officer of the Local Fund Audit Directorate and may in like manner withdraw such powers and functions so delegated.

Power to dispense with detailed audit

17. The Director may, when circumstances so warrant, dispense with detailed audit of any account or class of transactions and apply such limited check in relation to such accounts or transactions as he may deem fit.

Defalcation or loss in money or stores to be reported by the Executive Authority

18. (1) Whenever any defalcation or loss in money or stores of a local authority is discovered the fact shall be promptly reported by the Executive authority to the Director and to the Controlling Authority giving in detail the circumstances which led to such defalcation or loss.

Note:- In this sub-section Controlling Authority means the Head of the Department concerned.

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<i>Laying of audit report</i>	(2) On receipt of a report under sub-section (1), the Director shall immediately conduct or cause to be conducted a special audit of the accounts of that local authority as he considers necessary depending upon the magnitude of such defalcation or loss: Provided that nothing in this section shall prevent the local authority from taking criminal proceedings against any person suspected of, or involved in, any defalcation or loss of money or stores, where such a course is considered expedient.
<i>Protection of action taken in good faith</i>	19. The Director shall send to the Government annually a consolidated report of the accounts audited by him containing such particulars which he intends to bring to their notice and the Government shall within a period of three months after the receipts of the same; cause it to be laid before the Legislative Assembly.
<i>Special provision for pending audit</i>	20. No suit, prosecution or other legal proceedings shall lie against the Director or any officer acting under the provisions of this Act for anything which is, in good faith, done or intended to be done under this Act or rules made there under.
<i>Power of the State Government to make rules</i>	21. All audit of accounts pending at the commencement of this Act in respect of any local authority or local fund included in the Schedule shall, notwithstanding anything contained in this Act, be continued and completed by the Director, within such time as may be prescribed, in the same manner in which such accounts were being audited by him, as if this Act had not been enacted.
	22. (1) The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:- (a) <i>the manner and the form in which the accounts of a local authority whose accounts are subject to audit under this Act, shall be kept and presented;</i> (b) <i>the powers and duties of auditors and the procedure to be followed by them for conducting an audit and the period at which such audit may be conducted;</i> (c) <i>the manner in which the matters required to be published under this Act shall be published; and</i> (d) <i>all other matters, which may be or are required to be prescribed.</i> (3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session and if, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be;

so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

Power to remove difficulties

23. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion may require, do anything not inconsistent with the provisions of this Act which appears to them to be necessary or expedient for the purpose of removing the difficulty.

Savings

24. The provisions of this Act shall not apply to any case, suit, appeal, revision petition or any other proceedings that may be pending at the commencement of this Act before an auditor, civil court or the Government and the law in force immediately before the commencement of this Act shall, notwithstanding anything contained in this Act, continue to apply to such cases, suits, appeals, revision petitions and other proceedings.

THE SCHEDULE
[See section 4 (3)]

1. All Municipal Corporations
2. All Municipalities
3. All Gram Panchayat Units
4. All Zilla Panchayats

R. K. Purkayastha, SSJS
L.R-cum-Secretary
Law Department.

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